

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA,)
)
)
Plaintiff,)
) No. 3:08-CR-63
V.) (PHILLIPS/SHIRLEY)
)
LOUIS AYALA MORENO,)
)
Defendant.)

MEMORANDUM AND ORDER

All pretrial motions in this case have been referred to the undersigned pursuant to 28 U.S.C. § 636(b) for disposition or report and recommendation regarding disposition by the District Court as may be appropriate. On July 22, 2008, this criminal action came before the Court for a hearing on attorney Kim Tollison's Motion to Withdraw [Doc. 12]. Attorney Cynthia Davidson appeared on behalf of the government. Attorney Kim Tollison appeared on behalf of the defendant, who was also present.

During the hearing, attorney Tollison advised the Court that a legal conflict had developed as to the representation of defendant. In light of the conflict, the motion to withdraw [Doc. 12] was **GRANTED** and attorney Tollison was relieved of any further responsibilities as to the representation of defendant Moreno. Attorney Theodore Kern was also present at the hearing and advised the Court that he would be willing to accept appointment in this matter. Accordingly, the Court appointed Mr. Kern to represent defendant Moreno in this matter.

After his appointment, attorney Kern made an oral motion to continue the trial in this matter scheduled for August 1, 2008. The Court found, and the parties agreed, that it was necessary to continue the August 1, 2008, court date in order to allow attorney Kern time to become acquainted

with the facts of this case, to file any necessary motions, for the Court to resolve any such motions, and for the parties to prepare for trial.

In light of the Court's finding, and the agreement of the parties, the Court finds that the ends of justice served by a continuance outweigh the interest of the defendant and the public in a speedy trial. See 18 U.S.C. § 3161(h)(8)(A). Specifically, the Court finds that failure to grant a continuance under these circumstances would deny the defendant the reasonable time necessary for effective preparation for trial, resulting in a miscarriage of justice. See 18 U.S.C. § 3161(h)(8)(B)(i),(iv). The Court finds that additional time is needed: to allow the defendants to review the case file in this matter; to allow the defendant to file any necessary motions; for the Court to hear argument on and rule on any such motions; for the District Court to rule on any objections to any Reports and Recommendations the Court might issue; and for both parties to then prepare for trial based upon the resolution of any such motions. The Court finds that this could not take place before the August 1, 2008, trial date, or in less than approximately seven months. Therefore, the defendant's oral motion to continue is hereby **GRANTED** and the trial in this matter is hereby **CONTINUED** to **March 10, 2009**. The Court further finds, and the parties agreed, that all time between the July 22, 2008, hearing and the new trial date of March 10, 2009, is fully excludable time under the Speedy Trial Act. See 18 U.S.C. § 3161(h)(8)(A)-(B)(i) and (iv).

In light of the new trial date, the Court set the following deadlines: the defendant shall have until and including **September 16, 2008**, to file any motions; and the government shall have until and including **September 30, 2008**, to respond to any such motions. Additionally, the Court scheduled a motion hearing for **October 7, 2008, at 9:30 a.m.**

In summary, it is **ORDERED**:

- (1) Attorney Tollison's motion to withdraw [Doc. 12] is hereby **GRANTED**;
- (2) The defendant's oral motion to continue is hereby **GRANTED**;
- (3) The trial of this matter is reset to commence on **March 10, 2009, at 9:00 a.m.**, before the Honorable Thomas W. Phillips, United States District Judge;
- (4) All time between the July 22, 2008, hearing and the new trial date of **March 10, 2009**, is fully excludable time under the Speedy Trial Act for the reasons set forth above;
- (5) The motion deadline is extended to **September 16, 2008**;
- (6) Responses to any such motions shall be due on or before **September 30, 2008**; and
- (7) The Court will conduct a hearing as to any such motions on **October 7, 2008, at 9:30 a.m.** before the undersigned.

IT IS SO ORDERED.

ENTER:

s/ C. Clifford Shirley, Jr.
United States Magistrate Judge